

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1239 of 2012

IN

Civil Writ Jurisdiction Case No. 4464 of 2005

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Dinesh Prasad Singh S/O Sri Ram Bali Singh Assistant Teacher, Middle School,
Baddi Police Station- Sheo Sagar, District- Rohtas At Sasaram, Permanent R/O
Vill.-Naraina, P.O.- Chandrakaithi, P.S.-Chenari, Distt.-Rohtas

.... Appellant/s

Versus

1. The State Of Bihar
2. The Director (Primary Education) Secondary, Primary And Adult Education
Department, New Secretariat, Patna
3. The Regional Deputy Director Of Education, Patna Division, Patna
4. The District Superintendent Of Education, Rohtas At Sasaram

.... Respondent/s

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Appearance :

For the Appellant/s : M/S.Rajendra Narayan, Om Prakash Singh & Jay
Prakash Singh

For the Respondent/s : MD. Anis Akhtar, AC to G.A.1

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 09-03-2015

This intra-court appeal is against the judgment and order dated 22-2-2012 passed in C.W.J.C. No. 4464 of 2005, whereby the learned single Judge dismissed the writ petition filed by the petitioner, challenging the order of his dismissal from service, on the ground that he used forged certificate showing to be an I.Sc. trained teacher to get employment. Let it be noted that the writ-



judgment was ex-parte, in the sense that on the day it was taken up, counsel for the writ-petitioner was not present nor was heard nor was the matter adjourned for appearance of the learned counsel. Why we have noticed this is only to notice where there are bulk- records and no assistance from one side, the duty of the Court is more onerous to look into the facts in detail on its own, and then come to a finding on merits. We are noticing this because there were material facts available on record, which have not even been referred to. It is this that persuades us to entertain and allow this appeal. As we have heard the learned counsels at length, we find even on merit the impugned order of dismissal cannot be sustained.

2. The writ-petitioner was appointed in 1980 and the appointment letter was Annexure-2 to the writ petition. The appointment letter does not mention as to the fact whether he was appointed as I.Sc. trained teacher or untrained teacher; but it does state that he was being appointed in the pay-scale of I.Sc. Rs.160/-. In the writ petition it was stated that this is the pay-scale meant for untrained I.Sc. teachers, whereas for trained I.Sc. the stipend was Rs.175/- and not Rs.160/- and for matric trained it was Rs.150/-. Though there have been several rounds of litigation before this Court, in none of the rounds the State has challenged this appointment letter. It thus gives them to contest that the writ petitioner was appointed as I.Sc. untrained teacher. First, after various enquiries the petitioner was dismissed. This has brought the petitioner to this Court. In the first round this Court set aside the order of dismissal, which was an ex-parte order and directed the authorities to reconsider the matter. The petitioner was reinstated. In 1995 again the authorities suo motu took up the matter and dismissed him on ground of having used forged training certificate to get appointment. This was again challenged and this time the writ petition being C.W.J.C. No. 4533 of 1995 was



again allowed and the order was set aside, and the matter was remanded. It appears that then the writ petitioner filed contempt proceeding i.e., M.J.C. No. 223 of 1999 which was ultimately disposed of on 30-3-2000. The order of dismissal dated 31-12-1997 was again set aside, and the matter was remitted to the Director, Primary Education for reconsideration. Had the matter rested there, it would have been a different story. But, this Court while remitting the matter to the Director, Primary Education for reconsideration, also ordered thus:

“ The case is remitted to the Director, Primary Education who will pass a fresh order within two months from the date of receipt/production of copy of this order. If the alleged forged certificate not on the record, the petitioner can not be held to be guilty for production of so-called certificate and the Director will recall the order dated 31st December, 1997 as was ordered by the Court”.

3. What is the effect of the lines highlighted in the said order? Firstly, that part of the order attained finality. It was inter-party order. The effect of that order was that if the alleged certificate of training is not found on record, then the petitioner cannot be held guilty of seeking appointment on basis thereof nor could the petitioner be held guilty for using the same. It is in that perspective the Court then ordered that that if the certificate is not on record, then the order of dismissal passed on 31st December, 1997 had to be recalled. This is what attained finality. What the authorities did on remand was they again went into the entire circumstances under which the petitioner, on basis of that alleged training certificate, had sought appointment and having thus held, they cannot pass order of dismissal. This is what was challenged in the writ proceeding from which the present appeal arises.

4. Having considered the matter as argued, there are two important



aspects which the learned single Judge even noticed, much less appreciates The first, appointment letter(Annexure-2 to the writ petition) ; that is in respect of untrained pay-scale. The State has never denied that letter of appointment was wrong. They have maintained that he was appointed as trained teacher, but never produced the appointment letter. Therefore, it would be wrong to say that there was unimpeachable material that the petitioner was appointed as a trained teacher. We may also notice one other important fact. In 1989 itself the Regional Deputy Director issued Memo No. 95 dated 17-1-1989(Annexure-5 to the writ application). This letter of the Regional Deputy Director to the Superintendent of Education clearly states that the petitioner has received for some time pay at the pay-scale of trained teacher. It was wrong and recovery was ordered. It was then ordered that he has to be treated as untrained teacher and lastly arrangement should be made for his training. This document has not been even noticed by the learned single Judge. It is pursuant to this, subsequently the petitioner was sent for training and he has completed the training. There is no dispute about that.

5. The second event which the learned single Judge failed to appreciate was the inter-party order, as noted above. This Court clearly observed that if the alleged forged certificate was not available on record(not that it was not filed), then no action could be taken against the petitioner and the order of dismissal had to be recalled. This order had attained finality inter-party. The State failed to bring that certificate on record. That being the situation, the order which was binding inter-party would operate and no order of dismissal could be passed.

From the aforesaid, now it is clear that, to say that the petitioner was, in fact, appointed in trained pay-scale, is wrong and the certificate of training not being on record and not having been produced by the State, the inter-party order operates and no action could be taken on such a certificate or absence thereof.

Thus, in view of the aforesaid legal position, in our view, the authorities could not have bypassed the observation and direction of the Court and held otherwise.

For the reasons aforesaid, this appeal is allowed and the judgment and order of the learned single Judge is set aside. The effect would be that the petitioner would be reinstated in service. However, as the controversy was started on basis of some misconceived advice given to the writ petitioner, for the period he has been out of service, though he would be in continuity, he would be entitled to only ten percent of the remuneration.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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